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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 SCOTT C. SMITH,

11 Plaintiff,

12 v.

13 CAROLINE HARDY, et al.,

14 Defendants.

No. C06-5455-RBL/KLS

ORDER DENYING MOTION TO
ENFORCE AND GRANTING PAYMENT
OF COSTS TO BRING MOTION

15 Before the court is Plaintiff's motion for enforcement and order of sanctions. Dkt. 61.
16 Having carefully reviewed the motion, Defendants' response (Dkt. 65), and Plaintiff's reply
17 (Dkt. 66), the court finds and orders as follows:

18 **Background**

19 This matter was remanded and re-referred to the undersigned following reversal of this
20 Court's Order (Dkt. 42) granting summary judgment in favor of Defendants on all of Plaintiff
21 Scott C. Smith's claims. Dkts. 50 and 51. On remand, the Ninth Circuit directed this Court to
22 address qualified immunity and Plaintiff's third claim for failure to supervise and train in light of
23 its summary disposition. Dkt. 50.¹
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¹ The parties subsequently settled and the case was dismissed. Dkt. 58.

1 As the prevailing party on appeal, Plaintiff filed a bill of costs seeking his appeal fee of
2 \$455.00. Dkt. 53. Defendants did not oppose Plaintiff's cost bill and by order dated April 8,
3 2009, this court granted Plaintiff's cost bill and ordered the Defendants to pay the \$455.00
4 appeal filing fee directly to the District Court Clerk. Dkt. 56. The court determined that as of
5 the date of its order, no monies collected from Plaintiff by DOC for filing fees Plaintiff owed to
6 the District Court had been applied to his appeal filing fee in this case: "No deductions have been
7 applied toward payment of the appellate filing fee". *Id.*, p. 2, l. 11. In addition, the court
8 directed the Washington Attorney General's Office, Criminal Justice Division, to notify the
9 Washington DOC to "cancel the collection of any said monthly payments from Mr. Smith's
10 account for the collection of the appeal fee" in this case. *Id.*, pp. 2-3.

12 DISCUSSION

13 In his motion for enforcement of order and for sanctions, Mr. Smith asserts that DOC
14 violated the April 8, 2009 Order by continuing to collect the appeal fees in this case and keeping
15 the appeal fee as a lien on his inmate account. Dkt. 61, p. 2. He seeks an order holding
16 Defendants in contempt for violating the April 8, 2009 Order, imposing unspecified sanctions
17 against Defendants, eliminating the appeal fee debt from Plaintiff's DOC account, requiring the
18 court to reimburse him \$297.04 that he believes he overpaid for his appeal fee, and granting him
19 \$5.00 costs against Defendants for filing the instant motion. *Id.*, p. 4.

20 Defendants complied with the court's Order requiring them to pay the \$455.00 appeal fee
21 to the court. Dkt. 65, p. 2. Counsel for defendants admits that he failed to notify DOC that
22 collection of the appeal fee was cancelled, but he has now done so, thus eliminating any lien on
23 Mr. Smith's DOC account for the appeal filing fee in this case. *Id.* For his delay in notifying
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1 DOC, defense counsel is not opposed to Mr. Smith's request to be reimbursed \$5.00 for having
2 to file the motion to obtain compliance with the court's previous order.

3 Defendants concede that DOC's account records suggest that Plaintiff has overpaid his
4 appeal fee in this case, but that DOC's account records do not accurately reflect how the court
5 clerk has actually applied the funds sent to the court by DOC. *Id.* The court's previous review
6 of payments made by Plaintiff indicated that the only money applied to Plaintiff's appeal fee in
7 this case was the \$455.00 sent to the court by the Defendants. In light of the apparent
8 inconsistency between the court's records and those of DOC, the court has again reviewed its
9 account records of payments received from DOC out of Plaintiff's DOC account. This review
10 reveals that Plaintiff had four active accounts with the court, two of which have been paid in full,
11 and that his remaining balance for the payment of filing fees *with the District Court* is \$200.30.

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13 In this case, Mr. Smith has paid \$175.19 toward his \$350.00 initial filing fee and there is
14 a balance owing of \$174.81. The \$455.00 appeal fee for USCA # 07-35430 was paid by the
15 AG's office pursuant to Dkt. 56. No payments received by the District Court were applied to
16 the appeal fee.

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18 In Case No. C06-5712, Mr. Smith has paid the \$350.00 filing fee in full. There is no
19 balance owing.

20 In Case No. 07-5108, Mr. Smith has paid \$324.51 toward the \$350.00 filing fee, leaving
21 a balance remaining of \$25.49. (The appeal in this case (USCA 07-35927) was dismissed for
22 failure to pay the filing fee).

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24 In Case No. C09-5228, Mr. Smith paid the \$350.00 filing fee in full. There is no balance
25 owing.

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ORDER DENYING MOTION TO ENFORCE AND FOR SANCTIONS - 3

1 Although DOC records may reflect that monies are being deducted for payment of fees in
2 a particular case, the District Court has applied all payments toward the amounts outstanding on
3 Mr. Smith's accounts for the district court filing fee.

4 Accordingly, it is **ORDERED**:

5 (1) Plaintiff's motion for enforcement and sanctions (Dkt. 61) is **DENIED, except**
6 **that counsel for defendants shall pay Plaintiff's cost for bringing the motion in the amount**
7 **of \$5.00.**

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9 (2) The Clerk of Court is directed to send a copy of this Order to Plaintiff and to
10 counsel for Defendants.

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12 DATED this 18th day of December, 2009.

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16 Karen L. Strombom
17 United States Magistrate Judge
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